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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAY 19 2004

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, reopened, and denied again by the Director, California Service Center. The appeal is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In both decisions, the directors denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) relating to the applicant's claim of employment for [REDACTED]

On appeal of the Western Service Center director's initial decision, the applicant submits a handwritten employment statement from another employer.

The applicant does not respond to the California Service Center director's subsequent decision.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. 210.3(d).

On the Form I-700 application, the applicant claimed to have harvested and thinned onions, peaches, tomatoes and plums for 94 man-days from May 1985 to May 1986 for foreman [REDACTED] at "Farm Labor" in Fresno County, California.

In support of his claim, the applicant submitted a corresponding Form I-705 affidavit, along with a separate employment verification statement, both of which are signed by [REDACTED]

In the course of attempting to verify the applicant's claimed employment, the Service acquired information which cast doubt on the credibility of the applicant's documentation. The signatures on the applicant's supporting documents of his claimed employer, Andy Rios, were found to have been visibly and significantly different from authentic exemplars of Mr. [REDACTED] signature obtained by the Service.

On April 1, 1992, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. The record contains no response from the applicant to the Service's notice. The director concluded the applicant had not overcome the derogatory evidence, and on May 13, 1992, denied the application.

On appeal from this denial, the applicant submitted a separate handwritten letter dated June 5, 1992 from [REDACTED] bookkeeper at Wanopum Orchard, indicating the applicant had been a part-time employee at that concern since 1979 performing general orchard-related duties. Ms. [REDACTED] asserted that she has no records for the year 1986 and thereafter since the orchard was taken over by new owners at that time.

In her employment letter, [REDACTED] fails to provide a certified copy of corroborating records or state her willingness to personally verify the information provided, as required in 8 C.F.R. § 210.3(c)(3). Nor does she attempt to specify the type of crop or the duties involved during the applicant's alleged employment, as required in 8 CFR § 210.3(c)(3). In addition, the letter from Ms. [REDACTED] does not specify the number of man-days purportedly worked by the applicant; nor does she even attempt to provide the exact (or even approximate) dates of employment. Such a letter can have little or no probative or evidentiary value, and fails to clarify or resolve the adverse evidence acquired by the Service.

Furthermore, an applicant raises serious questions of credibility when asserting an entirely new claim to eligibility which was not initially put forth on the application. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather, they encourage him to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by Wanopum Orchard was first brought to the Service's attention at the appellate level. At the time of filing, the applicant did not reference this employment on the Form I-700 application, nor did he submit corroborating materials to document the alleged employment with the orchard. However, the very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The applicant failed to explain why this entirely new claim to eligibility was not advanced at the initiation of the application process.

Larger issues of credibility arise when an applicant claims employment which is called into question through a Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the applicant's initial claim. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for Wanopum Orchard will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

Subsequently, on March 2, 2001, the Director, California Service Center, withdrew the prior decision and reopened the case. On the same date, the director issued a notice of intent to deny which set forth additional adverse information obtained by the Service. Specifically, the applicant was informed that the Service had received numerous applications for temporary residence under the SAW program containing evidence of qualifying employment for [REDACTED] the applicant's claimed employer. In many of those cases, Mr. [REDACTED] claimed to have been a foreman with Fowler Packing in Fresno, California, where he was engaged in working with tomatoes and onions. However, in letters dated February 23, 1989 and April 25, 1989, [REDACTED] personnel clerk for Fowler Packing Company, advised the Service that [REDACTED] had never been employed by that enterprise, and that the firm was not involved in growing or harvesting tomatoes or onions. The letter of February 23, 1989 was also signed by [REDACTED] president of Fowler Packing Company.

While the present applicant did not claim to have worked at Fowler Packing Company, this derogatory information obtained by the Service seriously diminishes the credibility of his purported employer and, by extension, any documentation bearing Mr. [REDACTED] signature or to which Mr. [REDACTED] has attested. Furthermore, the evidence submitted by the applicant from Mr. [REDACTED] does not provide the name, phone number or location of the actual farm where the applicant's agricultural work was performed. Without this information, the Service is unable to verify the applicant's claimed employment.

The applicant was granted thirty days to respond to this additional adverse information. The record contains no response from the applicant to the Service's notice. On May 9, 2001, the director concluded the applicant had not overcome the derogatory evidence, and on May 9, 2001.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

In the course of attempting to verify the applicant's claimed employment for [REDACTED] the Service obtained adverse information impacting adversely on the credibility of the applicant's claim to have performed qualifying agricultural employment for Mr. [REDACTED] during the twelve-month period ending May 1, 1986. Moreover, the documentation from [REDACTED] submitted by the applicant does not provide sufficient information for the Service to verify the applicant's claimed employment. The applicant has failed to address, rebut or overcome the derogatory evidence obtained by the Service. Accordingly, the documentary evidence submitted by the applicant in support of his claim cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to establish credibly the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.